

APPEAL NO. 032577
FILED NOVEMBER 19, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 28, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant has not had disability; and that the respondent (carrier) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer of his claimed injury pursuant to Section 409.001. The claimant appeals, contending that he was discriminated against, that he was not given an opportunity to present evidence, that he was unable to hear a witness, that the interpreter did not pay attention to him, and that the employer's witness did not tell the truth. No response was received from the carrier.

DECISION

Affirmed.

The claimant attached several documents to his appeal, some of which were made a part of the CCH record, and some of which were not offered at the CCH. The documents that are attached to the claimant's appeal that were not offered at the CCH and were not made a part of the CCH record are not considered on appeal. Section 410.202(a)(1) provides that the Appeals Panel shall consider the record developed at the CCH. In addition, the documents attached to the appeal that were not offered at the CCH and were not made a part of the CCH record do not meet the requirements for being considered as newly discovered evidence. See Jackson v. Van Winkle, 660 S.W.2d 807 (Tex. 1983); Texas Workers' Compensation Commission Appeal No. 92124, decided May 11, 1992.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10); that he had disability as defined by Section 401.011(16); and that he notified his employer of an injury not later than the 30th day after the date on which the injury occurred pursuant to Section 409.001(a), or had good cause for failing to give timely notice of injury to the employer. Conflicting evidence was presented at the CCH on the disputed issues. The claimant asserts that the employer's witness was not truthful. The hearing officer found the testimony of the employer's witness to be credible. The hearing officer did not find the claimant's testimony to be credible. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong.

and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

An attorney represented the claimant at the CCH. There is no indication in the CCH record or in the hearing officer's decision that the claimant was discriminated against. Since all of the evidence that was offered by the claimant at the CCH was admitted into evidence, we find no merit in the claimant's assertion that he was not allowed to present his evidence.

The CCH record does not indicate that the claimant had any problem communicating with the interpreter and no complaint regarding the interpreter was made at the CCH. Likewise, no complaint was made at the CCH regarding any inability to hear a witness. Consequently, the claimant did not preserve those complaints for review on appeal.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge